

Town of Clarence
Zoning Board of Appeals Minutes
Tuesday, August 14, 2007
7:00 p.m.

Chairman Raymond Skaine called the meeting to order at 7:00 p.m.

Board of Appeals members present:

Chairman Raymond Skaine
Arthur Henning
Hans Mobius

Vice-Chairman Daniel Michnik
Ryan Mills
David D'Amato

Other Town officials present:

Director of Community Development James Callahan
Assistant Director of Community Development James Hartz
Town Attorney Steven Bengart
Councilman Bernie Kolber
Richard Bigler

Other Interested Parties Present:

Jim Gsell
Robert Caruana
Herbert Hofert
Allen Evans
Muriel Busch
Philip Cortese
Jay Capozzi

Nichole Gsell
Jeff Kinmartin
Kristy Evans
Martin Slawson
Michael Busch
Tom Vanderlinden

Motion by Arthur Henning, seconded by Hans Mobius, to **approve** the minutes of the meeting held on July 10, 2007, as written.

Raymond Skaine Aye
Arthur Henning Aye
Hans Mobius Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Jim Callahan explains that the Town does not have a specific regulation for the installation of generators regarding setbacks, generators are treated as an accessory structure. Rather than change the code to allow the generators at a reduced setback, they are made variances so the neighbors have an opportunity to comment.

Old Business**Appeal No. 1**

Daniel Singer
Residential Single-Family

Requests the Board of Appeals approve and grant a use variance to allow a commercial personal service shop (nail salon) in the Residential Single-Family Zoning District at 8353 Main Street.

Appeal No. 1 is in variance to Section 229-47, Permitted Uses.

DISCUSSION:

Daniel Singer is not present. Town Attorney Steve Bengart said Mr. Singer spoke with a representative of the Planning and Zoning Office today and asked to be placed at the end of the meeting; the decision is at the discretion of the Board. There are a number of neighbors present and Mr. Skaine does not want to make them wait until the end of the meeting in order to hear the Appeal.

ACTION:

Motion by Raymond Skaine, seconded by Daniel Michnik, to **table** Appeal No. 1, under Old Business. The appeal can be heard at a future meeting but will not be placed on an agenda until the proper information is received in the Planning and Zoning Office.

Raymond Skaine	Aye
Arthur Henning	Aye
Hans Mobius	Aye

Daniel Michnik	Aye
Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 2

James Gsell
Residential Single-Family

Requests the Board of Appeals approve and grant a 20' variance to allow a 75' front yard setback for the construction of a new single-family home at 10731 Greiner Road.

Appeal No. 2 is in variance to Section 229-52, Setbacks.

DISCUSSION:

Mr. Gsell explains that he wants to be set further back from the road. He has three young children and the larger setback would be for their safety. The neighbors have no problems with the request. There are houses on Greiner Road that are staggered. This is the last buildable lot between Bank Street and Salt Road. He wants to have big yards in both the front and the back of the house.

Mr. Michnik said the concerns remain the same as the last meeting. He suggests the applicant use the back yard for the safety of the children as it will be bigger than the front yard. Mr. Gsell said the proposed three-car attached garage will be in line with the house, it will not be bumped out. Based on the information received at the prior meeting Mr. Michnik continues to support that prior discussion.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 2, under Old Business, as written.

Raymond Skaine	Nay	Daniel Michnik	Nay
Arthur Henning	Aye	Ryan Mills	Aye
Hans Mobius	Aye		

MOTION CARRIED.

New Business**Appeal No. 1**

Robert Caruana
Residential Single-Family

Requests the Board of Appeals approve and grant an 8' variance creating a 2' setback line for the construction of a swimming pool at 4679 Hedgewood Drive.

Appeal No. 1 is in variance to Section 196-3, Swimming Pool Permits and Site Location.

DISCUSSION:

Mr. Caruana explains that he has structures, power lines and a septic tank that takes up a majority of his backyard. He has no other place to put the above ground pool. The neighbors have been notified.

Ryan Mills asked if there are any other feasible locations on the property. Mr. Caruana said no, the easiest location, other than what he is proposing, would have involved taking the power lines down and removing his deck, and then he would probably still need a variance. He received a verbal estimate for this alternative plan; it was \$1500 for the power lines and he really does not want to remove the deck.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 1, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye
Hans Mobius	Aye		

MOTION CARRIED.

Appeal No. 2

Jeff Kinmartin
Residential Single-Family

Requests the Board of Appeals approve and grant a 2.5' variance to allow a 7.5' side yard setback for the installation of a generator at 6141 Bridlewood Dr. So.

Appeal No. 2 is in variance to Section 229-55 (E) (1), Accessory Structures.

DISCUSSION:

Mr. Kinmartin said he is just short of meeting the code for generator installation setbacks. Neighbor notifications are on file.

Mr. Mills asked if the applicant explored alternative locations. Mr. Kinmartin said the proposed location is the most convenient because of the gas meter and the electric lines.

ACTION:

Motion by Ryan Mills, seconded by Arthur Henning, to **approve** Appeal No. 2, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye
Hans Mobius	Aye		

MOTION CARRIED.

Appeal No. 3

Herbert & Beverly Hofert
Agricultural Rural Residential

Requests the Board of Appeals approve and grant a 2' variance to allow an 8' side yard setback for the installation of a generator at 10092 Clarence Center Road.

Appeal No. 3 is in variance to Section 229-44, Accessory Structures.

DISCUSSION:

Mrs. Hofert explains that there is 15' 3" on the side of the house; they thought this was enough room to install a generator, it is not. Neighbor notification is on file.

ACTION:

Motion by Arthur Henning, seconded by Daniel Michnik, to **approve** Appeal No. 3, as written.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Aye	Ryan Mills	Aye
Hans Mobius	Aye		

MOTION CARRIED.

Appeal No. 4

Allen & Kristy Evans
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' variance to allow a 6' fence height along the Main Street property line at 4345 Connection Drive.

Appeal No. 4 is in variance to Section 101-3, Fence Regulations.

DISCUSSION:

Mrs. Evans said the number one reason for the request is safety; they have already experienced a car accident on the property, luckily her three small children were inside when the accident took place. The fence would be a good sound barrier and would also provide privacy from the motel that is next to their property. Harris Hill Apartments also has a 6' fence. There would be no obstruction of view for drivers traveling on or off Connection Drive. Mr. Evans said they live across the street from Samuel's Grand Manor and deal with the parties that go on all night and strangers walking down the street watching the children play on the play set. People throw things out their car windows as they drive by, maybe a 6' high fence will help keep the garbage out of their yard and prevent their children from being hit with bottles or containers. The Evans' property is approximately 2' lower than Main Street. The fence would be 20' from the shoulder of the road. Neighbor notification is on file.

Mr. Mills asked for clarification on how an extra 2' of fence will help with a car crash or someone jumping over the fence. Mrs. Evans believes the fence will help with both issues. Mr. Mills asked what materials would be used for the fence. Mr. Evans explains the fence would be wood, solid and Rebar in the concrete. Mr. Mills asked if they would consider different material such as lattice or something transparent; this material is more costly.

Mr. Michnik visited the site and does not see a 6' fence causing any visual problems for drivers entering or exiting Connection Drive. Mr. Michnik agrees with a solid wood fence. Mr. Skaine agrees.

Mr. Henning is not sure that a fence will stop a car crash. Mrs. Evans said it would at least wake the driver up, other wise he would keep going into a house.

ACTION:

Motion by Daniel Michnik, seconded by Hans Mobius, to **approve** Appeal No. 4, as written.

ON THE QUESTION:

Mr. Mills suggests the condition that the fence is to be set back 23' from the shoulder of Main Street be added to the motion

Town Attorney Steve Bengart indicates the reason the Board is considering granting this variance; it is due to, not only the setback, but the fact that there is a height variance to the road, as the property is approximately 2' below the road; Zoning Board Members concur.

The fence is to be wood. The applicant understands this.

Mr. Michnik and Mr. Mobius agree to include the above conditions in the motion.

Raymond Skaine	Aye	Daniel Michnik	Aye
Arthur Henning	Nay	Ryan Mills	Nay
Hans Mobius	Aye		

MOTION CARRIED.

Appeal No. 5

Martin & Maria Slawson
Residential Single-Family

Requests the Board of Appeals approve and grant a 2' variance to allow an 8' fence height in the rear yard along the bike path at 8271 Walnut Creek Lane.

Appeal No. 5 is in variance to Section 101-3, Fence Regulations.

DISCUSSION:

Mr. Slawson explains that the bike path is behind his house and he would like privacy. A 6' high fence would not allow children to see over the fence. There is a 2'-3' elevation to the bike path. He would like to have a fence with a scalloped top, if he has to install a 6' fence it would be a straight top. The fence he is proposing would blend in with the others along the Peanut Line. Neighborhood notifications are on file.

Mr. Henning said the fences on the other side of the bike path are all 6' tall; the 8' fence may be out of character with the neighborhood, however, the applicant does need a fence in that area.

When Mr. Slawson bought the house he did realize that the bike path was behind it. The previous owners put the fence up for the swimming pool.

Mr. Michnik said if the variance is granted it will start a trend to change all the fences along the bike path and eventually what will happen is a tunnel will be created. A 6' fence would be sufficient, the applicant has shrubs and trees where the 4' fence is. 2' is a substantial request. If the request was granted it would change the look of the bike path.

Mr. Mobius asked the applicant what part of the fence will be 6'? The pinnacle or the actual fence? Mr. Michnik clarifies by saying if the applicant installs a picket fence he is asking for 8', if it is a straight fence he wants 6'.

Mr. Slawson said he may consider a 6" or 1' variance as opposed to a 2' request. Mr. Callahan said the problem is that the fences come in sections and it will either be 6' or 8', nothing in between unless the applicant is building it himself.

Mr. Mills is not in favor of the 8' fence as he agrees with Mr. Michnik in that it will disrupt the character of the area. He would be agreeable to a 6' 6" with the pinnacle fence.

Mr. Skaine would not like to see the fence any higher than 6' 6".

ACTION:

Motion by Daniel Michnik, seconded by Arthur Henning, to **deny** Appeal No. 5, as written, for the following reasons:

- If the variance is granted it will produce an undesirable change in the character of the neighborhood and will be a detriment to nearby properties.
- The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than the variance.
- The variance is substantial.
- The proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood.

Raymond Skaine Aye
 Arthur Henning Aye
 Hans Mobius Nay

Daniel Michnik Aye
 Ryan Mills Aye

MOTION CARRIED.

Appeal No. 6

Muriel Victoria Busch
 Traditional Neighborhood

Requests the Board of Appeals approve and grant a 144 sq. ft. variance to allow an 864 (24' x 36') sq. ft. private garage in the rear yard at 5899 Goodrich Road.

Appeal No. 6 is in variance to Section 229-66, Accessory Structures.

DISCUSSION:

Mrs. Busch said she and her husband have a classic car that they would like to store in the back of the proposed garage. They would like the front of the proposed structure to be big enough to hold their lawn furniture and lawn maintenance equipment on one side, and large enough for her husband to work on a vehicle if it breaks down. Mr. Busch said it will be a work shop and a storage area.

Mr. Skaine refers to a letter from George Urban dated July 30, 2007, the letter is on file. Mr. & Mrs. Busch did not receive the letter. As the Busch's read the letter, Mrs. Busch said their proposal would not extend on to Mr. Urban's property. Mr. Urban has never actually contacted the Busch's. Mr. Busch said he spoke with Mr. Busch's son, Mark, who told him to contact George Urban. Mr. Busch tried several times to contact Mr. Urban; however, he was on vacation. Once Mr. Urban returned from his vacation Mr. Busch tried to contact him twice, he left his phone number with Mr. Urban's secretary but has not received a call from Mr. Urban. Mrs. Busch said there was never a plan for a 2-car garage.

Neighbor notifications are on file.

The Busch's agree that the present structure will be torn down.

The proposal meets the side yard setback requirements.

Mr. Mills asked about the garage construction. Mrs. Busch said her sons will help them build the garage, it will have a concrete slab, the siding will be vinyl and will match the house, the roof will match the house as well, the front door will be one double door, the back door will be a single door. The main door will be on the north side of the building, there will be no access to the south side of the structure.

There will be no business conducted from the proposed structure. Mrs. Busch said there will not be a driveway; she hopes it will be acceptable to just drive over the lawn to get to the structure. The Busch's hope to start construction immediately so that the structure is useable by winter 2007.

Mr. Michnik wonders if the size of the proposed structure will fit into the character of the neighborhood. There are only a few similar structures in the area. The height of the structure is 14'6". Mr. Busch said there will be no storage in the ceiling of the structure.

Mr. Skaine would like to see a time frame put on the project so it will be completed in a timely manner. Mr. Callahan said the building permit process will control that.

ACTION:

Motion by Hans Mobius, seconded by Arthur Henning, to **approve** Appeal No. 6, as written.

Raymond Skaine	Nay	Daniel Michnik	Nay
Arthur Henning	Aye	Ryan Mills	Aye
Hans Mobius	Aye		

MOTION CARRIED.

Appeal No. 7

Domenic Cortese
Residential Single-Family

Requests the Board of Appeals approve and grant a 5' variance creating a 5' side yard setback for the installation of a permanent generator at 4653 Pine Manor.

Appeal No. 7 is in variance to Section 229-44, Accessory Structures.

DISCUSSION:

Philip Cortese is representing his father, Domenic Cortese. He explains that the proposed location is the only area where a generator could be installed due to concrete and gardens around the entire house. Mr. Skaine said the property was not staked, he advises the applicant that this is a requirement. It is clarified that the variance request is actually 3' not 5'.

A neighbor notification is on file.

Mr. Michnik voices his concern with the fact that there were no stakes.

Philip Cortese will advise his father that the Board is unhappy that the property was not staked.

ACTION:

Motion by Ryan Mills, seconded by Hans Mobius, to **approve** Appeal No. 7, as written.

Raymond Skaine Aye
 Arthur Henning Aye
 Hans Mobius Aye

Daniel Michnik Aye
 Ryan Mills Aye

MOTION CARRIED.

Appeal No. 8

Nancy Vanderlinden
 Residential Single-Family

Requests the Board of Appeals approve and grant two variances:

1. A 480 square foot variance creating a 1,200 square foot detached garage.
2. A 3' variance to allow a 19' high accessory structure.

All for the construction of a new garage at 4735 Harris Hill Road.

Appeal No. 8 is in variance to Section 229-55, Accessory Structures.

DISCUSSION:

Tom Vanderlinden is present and explains he currently has a 20' x 18' garage; however, he needs more space for storage. Many of his storage items are stored in a structure at his mother's house; this structure is 20' x 40'. Combining his current garage with the storage space at his mother's house is the reasoning for the request for a 1,200 square foot detached garage. He will be losing the storage space at his mother's house at the end of the year, as she is moving. The height variance is being requested in order to match the existing slopes of house and garage.

Mr. Michnik asked if the structure will be larger than the home. Mr. Vanderlinden said it will be close, in square footage, to his home; however there will be additions to the house within the next two years. Mr. Michnik asked what will be stored on the second level of the structure. Mr. Vanderlinden said he is proposing a sloped roof with a 6'/12' pitch, he thinks the actual height is 17'6". Mr. Michnik suggests incorporating the garage into the planned additions of the house. The proposal does not fit into the character of the neighborhood as the size will be overwhelming.

Mr. Henning asked if the applicant will be tearing down the present building, Mr. Vanderlinden said yes and indicated he will be doing the construction. He will store his personal items in the garage, and agrees there will be no business conducted from the proposed garage.

Mr. Mills asked if the applicant's needs can be accommodated if the proposed structure had less square footage. Mr. Vanderlinden said he thought of that but the 20' x 40' structure is so full of storage items that his mother can not park her car in the garage. He wants to be able to park his vehicles in the garage. When he renovates his home he was not planning on building a larger attached garage.

Mr. Mobius asked about the chicken coop. Mr. Vanderlinden said the coop has been gone for 10 years.

Mr. Skaine is concerned with the height request as it will be out of character with the neighborhood. He also feels there are other ways of accomplishing the storage of items, such as renting storage space. Mr. Vanderlinden said three doors down from his house there is a garage that is at least 30' x 50'. No members of the Board saw this garage when they visited the site.

Neighbor notifications are on file. The applicant has talked to the neighbors and there is no opposition.

ACTION:

Motion by Daniel Michnik, seconded by Ryan Mills, to **deny** Appeal No. 8, as written, based on the following:

- An undesirable change will be produced in the character of the neighborhood.
- The benefit sought by the applicant can be achieved by some other method feasible to the applicant, by storing his items in an off-site storage facility.
- The request is substantial.
- When the applicant purchased the property he knew the garage might not suite his ideals.

ON THE QUESTION:

Mr. Mobius asked if the height can be adjusted, Mr. Vanderlinden said he can change the height to 17'6". Mr. Henning asked if the applicant can make the garage smaller, Mr. Vanderlinden can not see how he can fit all his items in a smaller garage, he does not want an attached garage. He explains that he would like to have an open area in one corner of the structure, this area would have an overhang and he would store his grill, etc. there; things he uses all the time; the size of this area would be about 8' x 16'. Mr. Mobius said the applicant might consider putting a breezeway between the house and the garage, this would allow the structure size to be 960 square feet, per the code.

Town Attorney Steven Bengart asked the Board if they would consider withdrawing the motion and table the agenda item to allow the applicant time to reconfigure the proposal.

Mr. Mills agrees to withdraw his second on the previous motion.

Mr. Michnik would agree to withdraw his motion only if the applicant is aware of what the Board is looking for, which is the garage and the house to somehow be attached. The applicant must also understand that the request would still be in excess and this does not guarantee him that the request would be granted. The applicant understands. Mr. Michnik also requests the applicant come back with hard numbers for the proposal. Mr. Vanderlinden does not want an attached garage, even with a breezeway.

Jim Callahan said, with a detached garage, a 320 square foot variance could be requested, if the open area is 8' x 20'. The second variance would be a 1'6" variance on the height if the applicant was requesting a 17'6" high structure. Mr. Vanderlinden said he could do a 16' high structure.

Mr. Michnik said any detached garage that has come before this Board has somehow been attached to the building through a breezeway; based on this information Mr. Michnik will not withdraw his motion because the applicant has voiced his unwillingness to attach a breezeway from the house to the garage.

Mr. Mills said he would be amenable to a 250 square foot variance.

Based on what Mr. Michnik is hearing from the Board members he will withdraw his motion, but he wants the Board to realize that every detached garage that came before the Zoning Board of Appeals has been required to attach a breezeway to make it part of the building.

Mr. Mills said there seems to be a decent distance between the house and the proposed garage, which would create a lengthy breezeway. The breezeway may not be in the best interest of the neighborhood's aesthetics.

ACTION:

Motion by Ryan Mills, seconded by Hans Mobius, to **approve** Appeal No. 8, with the caveat that the square footage is reduced from 480 square feet to 250 square feet.

ON THE QUESTION:

Mr. Michnik points out that the total square footage of the proposed building, including the open air portion will be 970 square feet.

Raymond Skaine	Aye
Arthur Henning	Aye
Hans Mobius	Aye

Daniel Michnik	Nay
Ryan Mills	Aye

MOTION CARRIED.

Appeal No. 9

The Capozzi Corporation
PURD

Requests the Board of Appeals approve and grant an 18" variance to allow the grade of a new single-family home at 9689 Stonecliff Court to be 66" over road grade.

Appeal No. 9 is in variance to Section 229-23, Grade.

DISCUSSION:

Jay Capozzi explains that he wants the foundation higher to allow windows in the basement, the request will also relieve some of the cost for chipping the stone for the foundation, the actual finished grade will remain the same. The house will be approximately 7,000 square feet. The debris will be cleaned off the property.

In response to Mr. Mills question regarding what type of basement is planned; Mr. Capozzi said it will be a daylight basement. The windows will be 4' high; there will be a 3' foundation wall, and 4' above that. The home has not been purchased yet.

ACTION:

Motion by Ryan Mills, seconded by Daniel Michnik, to **approve** Appeal No. 9, as written.

Raymond Skaine Aye
Arthur Henning Aye
Hans Mobius Aye

Daniel Michnik Aye
Ryan Mills Aye

MOTION CARRIED.

Meeting adjourned at 8:42 p.m.

Carolyn Delgato
Senior Clerk Typist